

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

RRev..No. 365 of 2007

**RCA.180/2006 of D.C. & SESSIONS COURT,KOZHIKODE
RCP.88/2006 of ADDL.M.C.,KOZHIKODE-I**

PETITIONERS/APPELLANTS/RESPONDENTS:

- 1. GLADIS DAVID, AGED 67 YEARS, W/O. DAVID
CHATHAMBALLI, KASABA AMSOM, 17/1671,
KARYAKUNNU DESOM, KOZHIKODE.**
- 2. JAYARAJ DAVID, AGED 41 YEARS,
S/O. DAVID CHATHAMBALLI, KASABA AMSOM,
17/1671, KARYAKUNNU DESOM, KOZHIKODE.**
- 3. JUSTIN DAVID, AGED 39 YEARS,
S/O. DAVID CHATHAMBALLI, KASABA AMSOM, 17/1671,
KARIYAKUNNU DESOM, KOZHIKODE.**
- 4. JASNA DAVID, AGED 33 YEARS, D/O. DAVID
CHATHAMBALLI, KASABA AMSOM, 17/1671,
KARYAKUNNU DESOM, KOZHIKODE.**

**BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.S.A.ANAND**

RESPONDENTS/RESPONDENTS/PETITIONERS:

- 1. KALOOR CHANDRA MOHAN, AGED 60 YEARS,
S/O. KALOOR KRISHNAN, KASABA AMSOM,
KARYAKUNNU DESOM, KOZHIKODE-673 614.**
- 2. KALOOR BALASUBRAMANYAN, AGED 57 YEARS,
S/O. KALOOR KRISHNAN, KASABA AMSOM,
KARYAKUNNU DESOM, KOZHIKODE-673 614.**
- 3. KALOOR BALAGOPALAN, AGED 55 YEARS,
S/O. KALOOR KRISHNAN, KASABA AMSOM,
KARYAKUNNU DESOM, KOZHIKODE-673 614.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION
ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

R.C.R.No. 365 OF 2007

ORDER

Balakrishnan Nair, J.

The petitioners are the tenants and the respondents are the landlords. The scheduled building was taken on rent by the predecessor in interest of the petitioners in 1964. The Rent Control Petition was filed, claiming eviction, under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The landlords contended that rent was remaining in arrears from February 1986. They also claimed that the third respondent herein wanted the building for his residence. He was residing in the family house and later, he has shifted his residence to a rented building. Therefore, he is in need of a residential building for him and his family. On the above

grounds, eviction was sought.

2. The tenants resisted the application contending that they have kudikidappu right over the building. The claim regarding arrears of rent was also denied by them. They further submitted that the claim made by the third respondent herein is only a ruse to evict them. He can reside in the family house and he has landed properties also, where he can construct a residential house for him. Therefore, the tenants prayed for dismissal of the Rent Control Petition. The Rent Controller allowed the petition on both the grounds. The appellate authority also affirmed the said finding. Hence this revision.

3. The claim of kudikidappu right over the building was held against the petitioners on the ground that the said contention is barred by res judicata. When, earlier eviction proceedings were initiated against the predecessor in interest of the petitioners, such a plea was raised.

Therefore, the matter was referred to the Land Tribunal and the Tribunal held that the claim is unsustainable. The said decision was incorporated in the decision of the Rent Controller in the said Rent Control Petition. The said order has become final. Therefore, the said claim was rightly rejected, as barred by res judicata. Though the petitioners denied the claim of the landlords on the ground of arrears of rent, they did not adduce any evidence to show that they have paid the rent. From the evidence on record, it can be seen that the second respondent herein (RW1) has admitted in his evidence non payment of rent from February 1986. Apparently, reason for the same may be their claim of kudikidappu right. So, we are of the view that the authorities below have rightly held that the tenants are liable to be evicted under Section 11(2) (b) of the Act.

4. The claim of the third respondent herein for bona fide need of the building was resisted, by

pointing out that the ancestral house, in which he was residing, is convenient for him. There is no need for him to shift his residence. But, later, during the pendency of the proceedings, he had actually shifted his residence to a rented building. But, the tenants contended that the third respondent herein, who got himself examined as PW1, has sufficient landed properties, where he could construct a residential building of his own. It was also contended that the building in their possession is not suitable for the residence of the third respondent. These contentions were considered and rightly rejected by the appellate authority. If the tenants are residing in the building, it is suitable for the residence of the third respondent also. Further, it is for the third respondent to decide whether the building is inconvenient or not. The tenants have no say in the matter. Further, the tenants cannot dictate that the third respondent should construct a new building for his

residence, even though the building occupied by them is available. As mentioned earlier, these contentions were rightly rejected by the authorities below. We find no reason to interfere with the said findings, which are findings on fact. Finally, the learned counsel for the petitioners submitted that the petitioners have been residing in the building for the last thirty three years. We feel that the said fact should weigh against the petitioners and not in their favour.

In the result, the revision fails and it is dismissed. Having regard to the facts of this case, the tenants are given four month's time from today to vacate the tenanted premises on condition that they file an unconditional undertaking, in the form of an affidavit, withdrawing their contentions and undertaking to vacate the premises within four months from today. This undertaking shall be filed before the execution court, if the E.P. has already been filed and if not, before the Rent Controller

within one month from today. While filing an undertaking as above, the petitioners shall pay the entire arrears of rent also. They shall continue to pay the monthly rent due from time to time till they vacate the premises. If all the above conditions are satisfied, eviction shall be deferred for a period of four months from today.

(K.Balakrishnan Nair, Judge)

13th December, 2007

(K.P.Balachandran, Judge)

tkv